

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - FLINT

ERIC ALLEN PERRY,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

CASE NO.: 4:04-CV-40237-FL
CRIM. NO.: 4:00-CR-50071-FL
HON. PAUL V. GADOLA
MAG. JUDGE WALLACE CAPEL, JR.

ORDER GRANTING IN-PART
AND DENYING IN-PART PETITIONER'S
MOTION FOR LEAVE TO AMEND 2255

This matter is before the Court on the Petitioner's "Motion For Leave To Amend 2255," filed on July 20, 2006, [D/E #57]. In his motion, the Petitioner is seeking to amend his Petition Under 28 U.S.C. § 2255 To Vacate, Set Aside Or Correct Sentence; to obtain a copy of the PSI Report; and to have the Order of Reference to Magistrate Judge vacated. In support of his motion, the Petitioner is requesting that he be entitled to receive a copy of his PSI Report in order to amend his petition. He is also asking that the Court order that either the United States Probation Office, or the Office of the Bureau Of Prisons release Petitioner's PSI Report to his counsel. Counsel for Petitioner indicates that a copy of the PSI Report is necessary in order to evaluate and amend the Petition. He further indicates that the petition cannot be amended unless the Court orders the release of the PSI Report. Without the release of the Report, counsel for Petitioner argues that the review of his sentence in this matter will be inadequate. Lastly, Petitioner is asking that the Order of Reference in this matter be rescinded.

The Government has responded to the motion. It does not oppose the release of the PSI

Report, although it does not agree that the petition to vacate cannot be pursued without the PSI Report. The Government does appear to oppose the motion as it does not state a basis for the request to amend the Petition.

Having reviewed the motion, the reasons stated therein, as well as the Response to the motion, the undersigned is inclined to grant the motion in-part and deny the motion in-part. The request for the release of the PSI Report is a reasonable request since the Petitioner in this matter does not have a copy of the Report, and that it may aid his current counsel in evaluating whether an amendment to the Petition is necessary. The undersigned however will deny the motion to amend at this time since the Petitioner has not articulated any reasons for amending his petition. The request to vacate the Order of Reference shall also be denied since Petitioner has made no showing that there is any reason why this matter should not be before the undersigned for review and consideration.

Accordingly, the Motion For Leave To Amend 2255 is hereby **GRANTED IN-PART AND DENIED IN-PART**. The motion is hereby **GRANTED** as to the Petitioner's motion for a copy of his PSI Report. **IT IS HEREBY ORDERED** that, either the United States Probation Office, or the Bureau of Prisons shall release forthwith to the attorney for the Petitioner, a copy of the PSI Report in this matter. The motion is **DENIED WITHOUT PREJUDICE** as to Petitioner's motion to amend. The motion is also **DENIED** as to Petitioner's request to vacate the Order of Reference.

IT IS SO ORDERED.

The parties are hereby informed that any objection to this order must be filed with the district court within 10 days after service, pursuant to Rule 72(a), Federal Rules of Civil Procedure.

DATED: August 30, 2006

s/ Wallace Capel, Jr.

WALLACE CAPEL, JR.

United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2006, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send electronic notification of such filing to the following: Mark C. Jones, AUSA, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participant(s) James Q. Butler, Esq., 818 18th St NW, Ste. 1010, Washington, D.C. 20006, U.S. Probation Office, 600 Church St., Flint, MI 48502, Bureau Of Prisons, 211 W. Fort St., Ste. 620, Detroit, MI 48226

s/James P. Peltier

James P. Peltier

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